



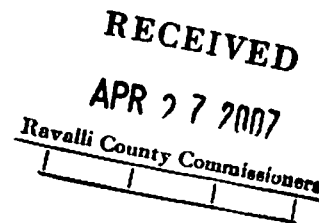
U. S. Department  
of Transportation

**Federal Aviation  
Administration**

Helena Airports District Office  
2725 Skyway Drive, Suite 2  
Helena, Montana 59602

April 25, 2007

The Honorable Greg Chilcott, Chairman  
Ravalli County Commissioners  
215 S. 4<sup>th</sup> St., Suite C  
Hamilton, MT 59840



Dear Chairman Chilcott:

On April 23, 2007 we received a call from Mark Fournier with a complaint that he has received discriminating treatment by the Airport Sponsor at Ravalli County Airport, Hamilton, Montana. He listed a variety of complaints including exclusive rights issues with regard to setting up an Fixed Based Operator (FBO) and fueling related work.

We asked Mark to put his complaint in writing – that we could not act on this complaint until it was received in writing. On April 24 Mark traveled to Helena and provided us with 3 sets of the written complaint. Included in the package was a 41 page brief.

The cover letter dated April 24, 2007, makes the following specific complaints:

1. The sponsor violated section 22 Economic Nondiscrimination section a., section b. subsection (1), (2), section c., section h.
2. The sponsor violated section 23 Exclusive Rights.
3. The sponsor violated section 24 Fee and Rental Structure.

The sections above are from the Airport Sponsor Assurances that are included in every grant application sent to FAA for federal assistance. Enclosed is a copy of what we received from Mark. All reports of perceived violations of an airport sponsor's Federal obligations received by FAA are addressed in accordance with the Federal Aviation Regulations (FAR) Part 13.1, *FAA Investigative and Enforcement Procedures* (14 CFR Part 13), Reports of Violations. A copy of the applicable section of this regulation is enclosed for your information.

Also enclosed is a copy of the April 24, 2007 e-mail we sent you that provided a "heads-up" on the complaint received; a web site address for the complaint process (Title 14 CFR Part 16), an excerpt from Part 16 on the pre-complaint resolution process, and an attached file containing a copy of FAA's Advisory Circular 150/5190-6 Exclusive Rights at Federally Obligated Airports.

Please review the enclosed complaint and provide us a written summary of Ravalli County's involvement. Please respond in writing within 2 weeks of receipt of this request. Upon receipt of your response, we will review both sides of the complaint to assist in an informal resolution.

A copy of this letter with enclosures is also being sent to our Compliance Program Manager in our Airports Division Office.

We explained to Mark that a copy of the complaint would be sent to the Sponsor, including a request for the sponsor to respond. We also explained that FAA needs to review both sides of the complaint before we can make any recommendations or take any necessary actions.

If you have any questions regarding this letter, please contact John Styba of this office at (406) 449-5279.

Sincerely,

A handwritten signature in blue ink that reads "David S. Stelling". The signature is fluid and cursive, with the first name "David" and last name "Stelling" clearly legible.

David S. Stelling  
Manager

Enclosures

cc: Via e-mail:  
ANM-626 (with copy of enclosures)  
Montana Aeronautics Division

each contact or group of related contacts in the rulemaking docket when it is opened.

**5. Does DOT policy permit ex parte contacts during the comment period?**

No, during the comment period, the public docket is available for written comments from any member of the public. These comments can be examined and responded to by any interested person. Because this public forum is available, DOT policy discourages ex parte contacts during the comment period. They are not necessary to collect the information the agency needs to make its decision.

**6. What if the FAA believes it needs to meet with members of the public to discuss the proposal?**

If the FAA determines that it would be helpful to invite members of the public to make oral presentations to it regarding the proposal, we will announce a public meeting in the FEDERAL REGISTER.

**7. Are any oral contacts concerning the proposal permitted during the comment period?**

If you contact the agency with questions regarding the proposal during the comment period, we can only provide you with information that has already been made available to the general public. If you contact the agency to discuss the proposal, you will be told that the proper avenue of communication during the comment period is a written communication to the docket.

**8. If a substantive ex parte contact does occur during the comment period, what does FAA do?**

While FAA tries to ensure that FAA personnel and the public are aware of DOT policy, substantive ex parte contacts do occasionally occur, for example, at meetings not intended for that purpose. In such a case, we place a summary of the contact and a copy of any materials provided at the meeting in the rulemaking docket. We encourage participants in such a meeting to file written comments in the docket.

**9. Does DOT policy permit ex parte contacts the comment period has closed?**

DOT policy strongly discourages ex parte contacts initiated by commenters to discuss their position on the proposal once the comment period has closed. Such a contact at this time would be improper, since other interested persons would not have an opportunity to respond. If we need further information regarding a comment in the docket, we may request this from a commenter. A record of this contact and the information provided is placed in the docket. If we need to make other contacts to update factual information, such as economic data, we will disclose this information in the final rule docket or in the economic studies accom-

panying it, which are available in the docket.

**10. What if FAA needs to meet with interested persons to discuss the proposal after the comment period has closed?**

If FAA determines that it would be helpful to meet with a person or group after the close of the comment period to discuss a course of action to be taken, we will announce the meeting in the FEDERAL REGISTER. We will also consider reopening the comment period. If an inappropriate ex parte contact does occur after the comment period closes, a summary of the contact and a copy of any material distributed during meeting will be placed in the docket if it could be seen as influencing the rulemaking process.

**11. Under what circumstances will FAA reopen the comment period?**

If we receive an ex parte communication after the comment period has closed that could substantially influence the rulemaking, we may reopen the comment period. DOT policy requires the agency to carefully consider whether the substance of the contact will give the commenter an unfair advantage, since the rest of the public may not see the record of the contact in the docket. When the substance of a proposed rule is significantly changed as a result of such an oral communication, DOT policy and practice requires that the comment period be reopened by issuing a supplemental NPRM in which the reasons for the change are discussed.

**12. What if I have important information for FAA and the comment period is closed?**

You may always provide FAA with written information after the close of the comment period and it will be considered if time permits. Because contacts after the close of the comment may not be seen by other interested persons, if they substantially and specifically influence the FAA's decision, we may need to reopen the comment period.

## PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

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- 13.3 Investigations (general).
- 13.5 Formal complaints.
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## Federal Aviation Administration, DOT

## § 13.3

13.235 Judicial review of a final decision and order.

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13.301 Scope and purpose.

13.303 Definitions.

13.305 Cost of living adjustments of civil monetary penalties.

### Subpart I—Flight Operational Quality Assurance Programs

13.401 Flight Operational Quality Assurance program: Prohibition against use of data for enforcement purposes.

**AUTHORITY:** 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5128, 40113-40114, 44103-44106, 44702-44703, 44709-44710, 44713, 46101-46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304-46316, 46318, 46501-46502, 46504-46507, 47106, 47107, 47111, 47122, 47306, 47531-47532; 49 CFR 1.47.

**SOURCE:** Docket No. 18884, 44 FR 63723, Nov. 5, 1979, unless otherwise noted.

### Subpart A—Investigative Procedures

#### § 13.1 Reports of violations.

(a) Any person who knows of a violation of the Federal Aviation Act of 1958, as amended, the Hazardous Materials Transportation Act relating to the transportation or shipment by air of hazardous materials, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, should report it to appropriate personnel of any FAA regional or district office.

(b) Each report made under this section, together with any other information the FAA may have that is relevant to the matter reported, will be reviewed by FAA personnel to determine the nature and type of any additional investigation or enforcement action the FAA will take.

[Doc. No. 18884, 44 FR 63723, Nov. 5, 1979, as amended by Amdt. 13-17, 53 FR 33783, Aug. 31, 1988]

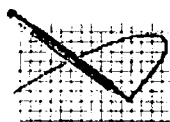
#### § 13.3 Investigations (general).

(a) Under the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*), the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*), the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2201 *et seq.*), the Airport and Airway Improvement Act of 1982 (as amended, 49 U.S.C. App. 2201 *et seq.*), Airport and Airway Safety and Capacity Expansion Act of 1987), and the Regulations of the Office of the Secretary of Transportation (49 CFR 1 *et seq.*), the Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged violations of the Federal Aviation Act of 1958, as amended the Hazardous Materials Transportation Act, the Airport and Airway Development Act of 1970, the Airport and Airway Improvement Act of 1982, the Airport and Airway Improvement Act of 1982 as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, or any rule, regulation, or order issued thereunder, the Administrator's authority has been delegated to the various services and or offices for matters within their respective areas for all routine investigations. When the compulsory processes of sections 313 and 1004 (49 U.S.C. 1354 and 1484) of the Federal Aviation Act, or section 109 of the Hazardous Materials Transportation Act (49 U.S.C. 1808) are invoked, the Administrator's authority has been delegated to the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, each Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel.

(c) In conducting formal investigations, the Chief Counsel, the Deputy Chief Counsel, each Assistant Chief Counsel, each Regional Counsel, the Aeronautical Center Counsel, and the Technical Center Counsel may issue an order of investigation in accordance with Subpart F of this part.

(d) A complaint against the sponsor, proprietor, or operator of a Federally-assisted airport involving violations of



John Styba/ANM/FAA  
ANM-HLN-ADO,  
Helena, MT

04/24/2007 10:34 AM

To "County of Ravalli" <commissioners@ravallicounty.mt.gov>  
cc Dave Stelling/ANM/FAA@FAA, Joelle  
Briggs/ANM/FAA@FAA, "Dave Heddich"  
<drh29@bitterroot.com>, Gary Gates/ANM/FAA@FAA,  
bcc  
Subject Complaint Received from Mark Fournier Related to Ravalli  
Co. Airport, Hamilton, MT

To: Ravalli County Commissioners

This is a "heads-up" to a complaint we received this week. Yesterday, 4-23-07, we received a call from Mark Fournier complaining about a series of problems in his attempt to become a FBO on Ravalli County Airport, Hamilton, Montana. He wants FAA to hear his complaint and is getting ready to file a law suit.

We asked Mark to send us his complaint in writing - he is in the process of doing that right now. We explained that we must have the complaint in writing to be able to take action which will involve requesting the Sponsor to reply to the complaints received.

Once we receive the written complaint we will copy you and ask that the County summarize their involvement in a written format for our review.

Mark talked about a formal complaint process (Part 16). We discussed this briefly and stated that the pre-complaint resolution must occur first.

The complaint process is included in:

Title 14 CFR Part 16

Rules of Practice for Federally-Assisted Airport Enforcement Proceedings

Can be found on the web at:

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1a0d49b378e41d26446da4dc52a6b81b&tpl=/ecfrbrowse/Title14/14cfr16\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=1a0d49b378e41d26446da4dc52a6b81b&tpl=/ecfrbrowse/Title14/14cfr16_main_02.tpl)

Or you can use a search engine like Google and type in: Title 14 CFR Part 16

Subpart C contains the pre-complaint process:

#### **§ 16.21 Pre-complaint resolution.**

(a) Prior to filing a complaint under this part, a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, or the use of a dispute resolution board, or other form of third party assistance. The FAA Airports District Office, FAA Airports Field Office, or FAA Regional Airports Division responsible for administering financial assistance to the respondent airport proprietor, will be available upon request to assist the parties with informal resolution.

(b) A complaint under this part will not be considered unless the person or authorized representative filing the complaint certifies that substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint have been made and that there appears no reasonable prospect for timely resolution of the dispute. This certification shall include a brief description of the party's efforts to obtain informal resolution but shall not include information on monetary or other settlement offers made but not agreed upon in writing by all parties.

In examining the written submittals by both parties, we will request assistance from our Regional Office Compliance Program Manager, Joelle Briggs (425-227-2626).

If we agree that the problems can not be resolved informally, the complaint can go the Part 16 route - at that point the case will be handled by FAA's Headquarters Compliance section.

We talked to Dave Heddich after the call from Mark and advised him that we would be contacting you as a heads-up. Dave said that your deputy County Attorney Alex Beal (phone 406-375-6750) has been handling the issues with Mark - please forward this message to Alex.

One item brought by Mark involved exclusive rights. He stated several times that much of the problems resolve around exclusive rights. The FAA advisory circular on this is 150/5190-6 Exclusive Rights at Federally Obligated Airports, dated 1/4/07 - attached is a copy:



AC 150-5190-6 Exc Rts.pdf

This advisory circular, in addition to a variety of other compliance related information, can also be found on the web at:

[http://www.faa.gov/airports\\_airtraffic/airports/regional\\_guidance/northwest\\_mountain/airport\\_obligations/](http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airport_obligations/)

Thanks,

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